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Question of the Falkland Islands (Malvinas)

Letter dated 27 January 2012 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the Secretary-General

In accordance with instructions received from the Government of the United Kingdom of Great Britain and Northern Ireland, I have the honour to refer to the letter dated 3 January 2012 from the Chargé d'affaires a.i. of the Permanent Mission of Argentina addressed to you, transmitting in an annex the text of a press release issued on 3 January 2012 by the Government of Argentina on the Falkland Islands (A/66/653).

The Government of the United Kingdom has no doubt about the sovereignty of the United Kingdom over the Falkland Islands or South Georgia and the South Sandwich Islands and their surrounding maritime areas. The principle of self-determination, enshrined in the Charter of the United Nations, underlies our position on the sovereignty of the Falkland Islands. There can and will be no negotiation on the sovereignty of the Falkland Islands unless and until such time as the Falkland Islanders so wish.

The United Kingdom is clear about both the historical and legal position on the sovereignty of the Falkland Islands. No civilian population was expelled from the Falkland Islands on 3 January 1833. An Argentine military garrison had been sent to the Falkland Islands three months earlier in an attempt to impose Argentine sovereignty over British sovereign territory. The United Kingdom immediately protested and later expelled the Argentine military garrison on 3 January 1833. The civilian population, who had previously sought and received British permission to reside on the Islands, were encouraged to remain. The majority voluntarily chose to do so. In 1833, the territorial borders of the Republic of Argentina did not include the geographical southern half of its present form, nor any territory in the Falkland Islands, Antarctica, or South Georgia and the South Sandwich Islands. The land which now forms the Argentine province of Tierra del Fuego, of which the Republic of Argentina purportedly claims the Falkland Islands forms a part, did not itself form part of the Republic of Argentina until approximately half a century after 1833, by which time the current Falkland Islands people had lived and raised two

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generations on the Islands. British sovereignty over the Falkland Islands dates back to 1765, some years before the Republic of Argentina even existed.

All of the above demonstrates that the Republic of Argentina's claim to the Islands, which it bases on the principle of disruption to its territorial integrity, is without foundation, as the Islands have never legitimately been administered by, or formed part of, the sovereign territory of the Republic of Argentina.

In May 1850, the Republic of Argentina and the United Kingdom ratified the Convention for settlement of existing differences and the re-establishment of friendship. In the 90 years following ratification of the 1850 Convention, the Republic of Argentina only submitted one official diplomatic protest, in 1888. In 1863, at the same time that Spain was negotiating a treaty recognizing the Republic of Argentina as a sovereign state, the British Governor of the Falkland Islands officially received a Spanish diplomatic and scientific delegation to the British Falkland Islands and received no protest. By 1880, the Falkland Islands had second-generation Falkland Islands-born people, and the Falkland Islands had been internationally accepted as British sovereign territory, with consular representation from many other countries on the islands, including Chile and the United States of America. The Republic of Argentina only returned to regular sovereignty protests after the outbreak of the Second World War in 1939.

The Falkland Islands had no indigenous peoples and the United Kingdom has never implanted any civilian population; all civilians have voluntarily migrated to, or been born in, the Falkland Islands. Civilian migrants voluntarily came from a wide number of countries, as they did throughout the whole Americas region during the nineteenth century.

Furthermore, the status of the Falkland Islands should not be solely dependent on two-centuries-old history, given the important developments in the international system and in international law since that time. Neither should it be subject to the aggressive territorial aspirations of another country. It should and will depend on the people of the Islands. The United Kingdom is a modern and democratic society that has helped many former non-self-governing Territories to obtain independence through the exercising of self-determination. The remaining Overseas Territories are not colonies; no people are subjugated and the United Kingdom does not remove any natural resources from the people of inhabited Territories. The relationship of association between the United Kingdom and the Falkland Islands is based on mutual consent. This contrasts with the approach of the Republic of Argentina; its Constitution seeks sovereignty over the Falkland Islands without any consideration for the wishes of the people of the Falkland Islands.

The United Kingdom maintains a modern relationship with all its remaining Overseas Territories based on partnership, shared values and the right of each Territory to determine whether it wishes to retain its link to the United Kingdom or not. The Falkland Islands, like other Overseas Territories, has its own unique Constitution, and significant powers are devolved to the democratically elected government consistent with the United Kingdom retaining the powers necessary to discharge its sovereign responsibilities, in particular for defence and external affairs. The United Kingdom has no intention of imposing a change in sovereign status against the will of the people concerned. Should the clear and constitutionally expressed wish of the Falkland Islands people be a change to its sovereign status, the United Kingdom will help the Falkland Islands achieve this. For as long as the

Falkland Islands people wish to retain their link to the United Kingdom, the United Kingdom will remain committed to their future development and continued security.

For the above reasons, the United Kingdom supports the Falkland Islands Government's legitimate decision to explore for hydrocarbons in Falkland Islands waters in accordance with international law, including the United Nations Convention on the Law of the Sea and article 1, paragraph 2, of the International Covenant on Civil and Political Rights.

The United Kingdom continues to believe that there are many opportunities for cooperation in the South Atlantic. However, in recent years the Republic of Argentina has:

- Withdrawn from cooperation on the South Atlantic Fisheries Commission and extended its fishing seasons in Argentine waters, thus endangering the long-term sustainable management of straddling fish stocks in the South Atlantic, in contravention of article 63 of the Convention on the Law of the Sea
- Repudiated the 1995 Joint Declaration on Hydrocarbons, which had provided for cooperation in a Special Cooperation Area that straddled both Argentine and Falkland Islands waters
- Placed a ban on charter flights travelling through Argentine airspace to the islands in 2003
- Introduced domestic legislation to penalize companies that wish to do business in or with the Falkland Islands
- Introduced a presidential decree in 2010 that does not comply with the freedom of navigation or the right of innocent passage provided for by international law, including the Convention on the Law of the Sea
- Threatened at the United Nations in September 2011 to withdraw from the 1999 United Kingdom-Republic of Argentina Joint Statement, which had allowed Argentine passport holders to enter the Falkland Islands for the first time since the 1982 conflict and had provided for the resumption of the Falkland Islands' only commercial air link with South America
- Asked the Mercosur region, in December 2011, to support a declaration denying access to their ports to Falkland Islands-flagged vessels, thus explicitly attempting to restrict trade and threatening the people of the Falkland Islands with economic isolation

These disturbing developments call into question the commitment of the Republic of Argentina to peaceful cooperation in the South Atlantic and adherence with binding international law. The United Kingdom has made a number of proposals for different types of cooperation and remains keen to foster a constructive relationship with Argentina and to promote practical cooperation in the South Atlantic. These have been rejected.

The United Kingdom notes that the Republic of Argentina regularly refers to regional statements of diplomatic support for Falkland Islands sovereignty negotiations, General Assembly resolutions, the last of which was issued in 1988, and resolutions of the United Nations Decolonization Committee. However, none of the regional statements or specific Falkland Islands resolutions fully reflect the legally binding principle of self-determination enshrined in the Charter of the United

Nations, nor the modern relationship between the United Kingdom and its Overseas Territories, which is based on self-determination. Regional statements and General Assembly resolutions do not modify or dilute the obligation of nations to respect the Falkland Islanders right of self-determination, enshrined under the Charter of the United Nations. All Caribbean participants of the UK-Caribbean Forum acknowledged this on 22 January 2012, when they committed to respecting the right of self-determination for all peoples, including Falkland Islanders.

The United Kingdom and the Republic of Argentina cannot negotiate away the right of self-determination. It is a principle which we are both legally bound to respect, and promote the realization of, in accordance with the Charter of the United Nations and international law. The Republic of Argentina, and any country that supports its wish to deny the Falklands people their rights, are reminded of their legally binding international obligations to respect the principle and right of self-determination for all peoples, as respectively set out under the Charter of the United Nations (Article 1.2), the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (common Article 1). In contrast to the position of the Republic of Argentina, the position of the United Kingdom and Falkland Islands Governments is firmly based on the legally binding and fundamental United Nations principle and right of self-determination for all peoples. The United Kingdom and Falkland Islands Governments fully respect and apply all legally binding international law. The United Kingdom's defensive military presence in the Falkland Islands exists only in order to defend the rights and freedoms of the people of the Falkland Islands to determine their own political, social and economic futures. The United Kingdom undertakes routine military exercises of short range missiles approximately every six months on the islands. It has done so since they were deployed there in response to the Republic of Argentina's invasion of the Falkland Islands in 1982. These exercises do not represent any change in the United Kingdom defence posture in the South Atlantic.

South Georgia and the South Sandwich Islands is a separate British Overseas Territory that is not considered under the Falkland Islands at the United Nations. It has no permanent settled population, and thus no people with a right of self-determination, and it is not a listed territory within the Decolonization Committee. The United Kingdom formally took possession of the islands of South Georgia and the South Sandwich Islands in 1775 and, with the exception of six weeks illegal occupation in 1982, has had uninterrupted possession since. The Republic of Argentina had never protested British sovereignty over South Georgia and the South Sandwich Islands until it conceived its claim to South Georgia in 1927 and to the South Sandwich Islands in 1948. In the 1940s and 1950s, the United Kingdom offered to refer the issue of sovereignty over South Georgia and the South Sandwich Islands to the International Court of Justice or international arbitration for settlement. Regrettably, the Republic of Argentina, without explanation, rejected all of these offers and refused to accept the jurisdiction of the International Court of Justice in this matter.

I should be grateful if you would circulate the present letter as a document of the General Assembly, under agenda item 45.

(*Signed*) Mark **Lyall Grant**